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WESTERN DISTRICT OF WASHINGTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
on its own behalf and as  
trustee on behalf of the  
Lummi Nation,

Plaintiffs,

v.

KEITH E. MILNER and SHIRLEY  
A. MILNER, et al.,

Defendants.

NO. C01-809R

ORDER GRANTING LUMMI  
NATION'S MOTION TO  
INTERVENE

The United States initiated this action seeking a declaration of the proper boundary between land owned by defendants and that owned by the United States, held in trust for the benefit of the Lummi Nation. The United States claims that the proper boundary is the mean high water mark. The Lummi Nation has now moved to intervene under Fed. R. Civ. P. 24(a)(2), claiming that the proper boundary is the line of vegetation, or high water mark. The United States does not oppose this motion to intervene, but a number of defendants have filed a brief in opposition. Having

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1 reviewed the briefs and applicable law, the court rules as fol-  
2 lows:

3 A motion by a party seeking to intervene under Fed. R. Civ.  
4 P. 24(a)(2) must meet the following criteria:

5 (1) the motion must be timely; (2) the applicant must  
6 claim a 'significantly protectable' interest relating to  
7 the property or transaction which is the subject of the  
8 action; (3) the applicant must be so situated that the  
9 disposition of the action may as a practical matter  
impair or impede its ability to protect that interest;  
and (4) the applicant's interest must be inadequately  
represented by the parties to the action.

10 Forest Conservation Council v. United States Forest Serv., 66 F.  
11 3d 1489, 1493 (9<sup>th</sup> Cir. 1995). It appears undisputed that the  
12 Lummi have met the first and second criteria; the motion was  
13 timely, and the interest in question is clearly a proprietary one.

14 The first question for the court, then, is whether the Lummi  
15 are so situated that the disposition of this action may as a  
16 practical matter impair or impede their ability to protect their  
17 property interest. The Lummi argue that a ruling on the proper  
18 boundary could bind them in any future action the nation decides  
19 to bring on the question. A ruling by the court on the location  
20 of the boundary between defendants' property and the tribal tide-  
21 lands could have a preclusive effect on any future Lummi claim  
22 that the line is elsewhere. Any remedy sought by the Tribe in an  
23 action against the United States for not adequately protecting its  
24 interest would not accomplish the return of the land, but would,  
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26

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1 at best, obtain only damages. The court finds that the Tribe's  
2 ability to protect its interest in the land would be impeded were  
3 it not allowed to intervene.

4 Furthermore, the court finds that given the difference in  
5 positions between the Tribe and the United States, it appears that  
6 absent its intervention the Tribe's interests may not be ade-  
7 quately represented. The Tribe's motion to intervene is, there-  
8 fore, GRANTED.

9 DATED at Seattle, Washington this 7<sup>th</sup> day of December, 2001.  
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11   
12 BARBARA JACOBS ROTHSTEIN  
13 UNITED STATES DISTRICT JUDGE  
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ORDER  
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